

## PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION  
(PCT Rule 66)

Date of mailing (day/month/year)		17.02.2005	
Applicant's or agent's file reference		REPLY DUE within 1 month(s) from the above date of mailing	
International application No. PCT/GB 03/05598	International filing date (day/month/year) 19.12.2003	Priority date (day/month/year) 19.12.2002	
International Patent Classification (IPC) or both national classification and IPC H04L29/06			
Applicant COGNIMA LTD et al.			

1. This written opinion is the **second** drawn up by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby **invited to reply** to this opinion.



**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 19.04.2005

Name and mailing address of the International preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2260 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Peeters, D Formalities officer (Incl. extension of time limits) Van Deursen, T Telephone No. +31 70 340-3478	
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**WRITTEN OPINION**International application No. **PCT/GB 03/05598****I. Basis of the opinion**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

**Description, Pages**

1, 2, 4-49 as originally filed  
 3 received on 01.02.2005 with letter of 01.02.2005

**Claims, Numbers**

1-27 received on 01.02.2005 with letter of 01.02.2005

**Drawings, Sheets**

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

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**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1-4, 6, 10-12, 18, 19, 25-27
Inventive step (IS)	Claims	5, 7-9, 13-17
Industrial applicability (IA)	Claims	

**2. Citations and explanations****see separate sheet**

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**Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

1 Reference is made to the following documents:

D1: WO 01/78319 A (RES IN MOTION LTD ;VANDER VEEN RAYMOND (CA);  
CASTELL DAVID (CA); L) 18 October 2001  
D2: EP-A-0 794 646 (IBM) 10 September 1997

2 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

The document D1 discloses, in terms of claim 1 (the references in parentheses applying to this document):

a method of automatically replicating data objects between a mobile device and a server, connected together via a wireless network, in which the timing of data replication across the network is determined by a network operator applying parameters that make efficient usage of network bandwidth (page 47 line 14-page 53 line 24), whereby:

i) a change log (page 48 line 31-page 49 line 6 "database 1950"; page 51 lines 5-17 "storage area 1970") lists all objects at the device and/or server to be replicated and the parameters then comprise a weight associated with each object that defines how urgently that object needs to be replicated (page 49 lines 5-17, "criteria", "configuration parameters", "received network parameters"; page 51 lines 15-22, "delivery rules"); and

ii) the parameters further comprise a threshold that is a function of time (implicitly disclosed, see below), with the weight of each object being locally compared to the threshold at a given time (page 52 lines 20-22) and the outcome of the comparison determining whether the object is sent for replication or not at that time.

Concerning the implicit disclosure of the feature "threshold that is a function of time", it is pointed out that document D1 already discloses the feature of assigning a weight to a message (page 49 lines 5-9 and page 51 lines 15-26: "maximum message size,

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maximum time reached, specific type of message, destination address, a content identifier in the subject or body, a set of configuration parameters"). Document D1 also discloses the use of this weight ("certain criteria") to decide to send immediately or to delay the sending (page 52 lines 20-22, page 53 lines 21-24). To do so, the weight must be compared to some value, i.e. to an implicit threshold, for example the weight of "emails" and "calendar events" (page 53 line 22) is above the threshold, the weight of "folder moves" (page 53 line 23) below the threshold. At off-peak hours everything is sent immediately (page 52 line 22, page 53 line 23), which corresponds to setting the implicit threshold to zero.

Since all the features are known in combination from document D1, the subject-matter of claim 1 is not new (Article 33(2) PCT).

- 3 The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claims 26 and 27, which therefore are also considered not inventive.

4 **Dependent claims**

- 4.1 Dependent claims 2-19 and 25 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty or inventive step, as those features are disclosed in documents D1 or D2 (see documents D1 and D2 and the corresponding passages cited in the search report) or are considered to be known to the person skilled in the art:
- the subject-matter of claims 2-4, 11-12, 18, 19 and 25 is known from D1;
  - the subject-matter of claim 6 is already known from D1: "delaying replication until non-peak times" (D1, page 52 line 22, page 53 line 23) anticipates "making efficient use of available bandwidth";
  - the subject-matter of claim 10 is already known from D1: the time variability of replication in D1 is included in the "threshold" which changes over time;
  - the additional features of claims 13-15 are known from D2,
  - the additional features of claims 5, 7-9, 16 and 17 are obvious design features for the person skilled in the art.

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4.2 The subject-matter of claims 20 to 24 appears to satisfy the criteria of novelty, inventive step and industrial applicability, as defined in Article 33(2) to (4) PCT. The subject-matter of claims 20 to 24 differs from the method disclosed in document D1 in that an opportunism threshold function is used to determine the further objects to be sent once a connection initiating object has been replicated. The problem to be solved by the present invention may be regarded as not being able to determine which further objects to send. The technical feature of using an opportunism threshold is neither known nor hinted at in the prior art.

The attention of the applicant is also drawn on the fact that the dependencies of "new" claims 20-24 (claims 22, 23, 24 dependent on claim 21) is not the same as the dependencies of the corresponding "old" claims 23-27 (claims 24, 25, 26, 27 dependent on claim 23).

D. Peeters  
Examiner